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Juveniles and Junkies--A Step in the Right Direction

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JUVENILES AND JUNKIES—A STEP IN THE RIGHT DIRECTION

The California legislature has been an innovator in prescribing treatment of youthful offenders[1] and narcotic addicts.[2] These innovations often have foreshadowed developments outside of California.[3] Such legislation has been appraised and analyzed by numerous writers[4] and scrutinized in many appellate court decisions.[5] Aspects of both programs recently were examined by the California Supreme Court in *People v. Navarro*.[6] In that case the court held section 3051 of the Welfare and Institutions Code—requiring the district attorney's concurrence for commitment to the narcotic addict treatment program in "unusual cases"—invalid as a violation of the separation of powers doctrine. In addition to this constitutional issue, the court discussed commitment to the Youth Authority based upon conviction of an optional sentence offense. Finally, the court considered the expungement effect of section 1772[7] honorable discharges from the authority.

1. CAL. WELF. & INST'NS CODE §§ 500-945, 1700-1861 (West 1972).

2. CAL. WELF. & INST'NS CODE §§ 3000-3311 (West 1972). The act provides for the treatment of narcotic addicts by involuntary commitment whether or not charged with a crime.

3. For example, in 1943 California was the first state to adopt the Youth Authority concept, which had been proposed by the American Law Institute as its 1940 Model Youth Correction Authority Act. Even prior to that time, however, reform school (1899) and a juvenile court system (1909) had been established. People v. Navarro, 7 Cal. 3d 248, 275-77, 497 P.2d 481, 500-01, 102 Cal. Rptr. 137, 156-57 (1972).

In 1961, the California legislature passed the first comprehensive statutory program in the United States for the compulsory commitment and rehabilitation of narcotics addicts. Cal. Stat. 1961, ch. 850, §§ 1-7, at 2221 (codified at CAL. WELF. & INST'NS CODE §§ 3000-311 (West 1972). Since then, similar provisions have been enacted in other states. *E.g.*, MASS. GEN. LAWS ANN. ch. 123, §§ 38-55 (Supp. 1972); N.Y. MENTAL HYGIENE LAW §§ 200-14 (McKinney 1971).

4. *E.g.*, Aronowitz, *Civil Commitment of Narcotic Addicts*, 67 COLUM. L. REV. 405 (1967); Belton, *Civil Commitment of Narcotics Addicts in California: A Case History of Statutory Construction*, 19 HASTINGS L.J. 603 (1968); Note, *Jury Trial for Juveniles: Equal Protection and California Commitment Proceedings*, 23 HASTINGS L.J. 467 (1972); Comment, *The California Juvenile: His Rights and Remedies*, 1 PAC. L.J. 350 (1970); Comment, *Civil Commitment of Narcotic Addicts*, 76 YALE L.J. 1160 (1967).

5. See text accompanying notes 14-69 *infra*.

6. 7 Cal. 3d 248, 497 P.2d 481, 102 Cal. Rptr. 137 (1972).

7. CAL. WELF. & INST'NS CODE § 1772 (West 1972).

This note will review the doctrine of separation of powers in light of the *Navarro* decision, including a discussion of prior judicial development of the doctrine and one possible area for further application. It will also discuss both Youth Authority sentencing and expungement remedies available after release from the authority.

Navarro and Separation of Powers

Navarro, having a prior conviction for assault with a deadly weapon, was charged with selling and offering to sell heroin. He was convicted on both counts. The trial court, however, suspended sentencing and conducted proceedings under section 3051[8]—which allows commitment to a narcotic addict treatment program as an alternative sentence for an addict convicted of a felony—to ascertain whether the defendant was a narcotic addict. Such a finding would have permitted an alternative sentence to be imposed. Despite the finding that Navarro was an addict, his prior conviction rendered him ineligible for the program under section 3052.[9] Yet, commitment still was possible under section 3061 if this was one of the "unusual cases,

8. "Upon conviction of a defendant for any crime in any superior court . . . if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics he shall adjourn the proceedings or suspend the imposition or execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility unless, in the opinion of the judge, the defendant's record and probation report indicate such a pattern of criminality that he does not constitute a fit subject for commitment under this section.

. . . .

"If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted to narcotics, he shall make an order committing such person to the custody of the Director of Corrections for confinement in the facility until such time as he is discharged . . . . In any case to which Section 3052 applies, the judge may request the district attorney to investigate the facts relevant to the advisability of commitment pursuant to this section. In unusual cases, wherein the interest of justice would best be served, the judge may, with the concurrence of the district attorney and defendant, order commitment notwithstanding Section 3052." CAL. WELF. & INST'NS CODE § 3051 (West 1972).

9. "Sections 3050 and 3051 shall not apply to persons convicted of, or who have been previously convicted of murder, assault with intent to commit murder, attempt to commit murder, kidnaping, robbery, burglary in the first degree, mayhem, a violation of Section 245 or a violation of any provision of Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code (but excepting subdivision 1 of Section 261) any felonies involving bodily harm or attempt to inflict bodily harm or any offense set forth in Article 1 (commencing with Section 11500) or 2 (commencing with Section 11530) of Chapter 5 of Division 10 of the Health and Safety Code or in Article 4 (commencing with Section 11710) of Chapter 7 of such Division 10 for which the minimum term prescribed by law is more than five years in state prison." CAL. WELF. & INST'NS CODE § 3052 (West 1972).

wherein the interest of justice would best be served" by commitment, but such action required the concurrence of the district attorney, who refused to consent. The trial court stated that, given legal authority, it would have committed the defendant to the rehabilitation center, but refused to do so because no authority seemed to exist. Navarro was sentenced to a state prison term. He appealed.

The first issue raised on the appeal was the constitutional validity of section 3051's requirement that the district attorney concur in any judicial decision committing the defendant to the narcotic treatment facility in unusual cases. The supreme court held that this provision[10] violated both the judicial power[11] and separation of powers[12] clauses of the California Constitution. The same issue—the prosecution consent prerequisite—had been raised before, but in the context of other code sections.[13] In each instance, as in *Navarro*, the restriction of a court's power, through the conditioning of that power's exercise on the district attorney's approval, was held to be an unconstitutional encroachment on judicial functions.

Prior Judicial Developments—Expansion of Judicial Function

The first judicial determination that the separation of powers doctrine is violated by a statutory requirement for district attorney assent was *People v. Tenorio*.[14] In that case, the supreme court held unconstitutional as an infringement on judicial power a requirement[15] that the prosecution approve a court's dismissal of an allegation of a prior conviction.[16] The *Tenorio* court stressed that this power to dismiss is

10. Section 3050, which applies identical provisions to municipal or justice court convictions, was also considered in issue by the court, and the *Navarro* decision applies equally to this section. 7 Cal. 3d at 258, 497 P.2d at 487, 102 Cal. Rptr. at 143.

11. "The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." CAL. CONST. art. 6, § 1.

12. "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." CAL. CONST. art. 3, § 1.

13. See text accompanying notes 15-26 *infra*.

14. 3 Cal. 3d 89, 473 P.2d 993, 89 Cal. Rptr. 249 (1970).

15. CAL. HEALTH & S. CODE § 11718 (West 1964).

16. 3 Cal. 3d at 95, 473 P.2d at 997, 89 Cal. Rptr. at 253.

In so holding, the court overruled the decision in *People v. Sidener*, 58 Cal. 2d 645, 375 P.2d 641, 25 Cal. Rptr. 697 (1962). Justice Schauer's dissent in that case raised the question of whether the power to dismiss a prior conviction was an essential part of the judicial process. He argued that such powers are indispensible and that while the legislature can control eligibility for probation, parole, and the term of imprisonment, "[c]onstitutional jurisdiction of the court to act cannot be turned on and off at the whimsy of either the district attorney or the Legislature. The power to act under our system of government means the power of an independent court to exercise its judicial discretion, not to servilely wait on the pleasure of the executive." *Id.* at 654, 375 P.2d at 647, 25 Cal. Rptr. at 703 (Schauer, J., dissenting).

judicial. "When the decision to prosecute has been made, the process which leads to acquittal or to sentencing is fundamentally judicial in nature."[17]

This separation of powers concept has been extended by subsequent decisions. In *Esteybar v. Municipal Court*[18] the challenged provision was the requirement that a magistrate obtain the consent of the prosecutor before determining that an offense be treated as a misdemeanor rather than a felony.[19] Under extreme circumstances,[20] the supreme court found this provision unconstitutional. The *Esteybar* judicial power issue differed from the power to dismiss a prior conviction discussed in *Tenorio* since it was statutory and not inherent in the constitution.[21] The court held, however, that because "a particular power has been conferred on a magistrate by statute does not prevent the exercise of that power from being a judicial act for purposes of the doctrine of separation of powers."[22] The legislature, in short, was not required to confer this power, but having done so could not condition its exercise upon the approval of either the executive or legislative branches.[23] The expanded definition of judicial power in *Esteybar* contributed to the decision in *People v. Clay*,[24] wherein the court reiterated the *Esteybar* holding that a legislatively granted judicial power cannot be conditioned on the approval of the district attorney.[25]

In all these cases, provisions purporting to vest discretion in the district attorney were declared unconstitutional. While *Tenorio* involved the inherent judicial function of dismissing allegations of prior convictions, the decisions in *Esteybar* and *Clay* concerned legislatively conferred powers: whether a charged offense should be tried as a misdemeanor or felony and whether probation should be granted. The basis for these decisions partially rested on the potential for abuse inherent in the unreviewable nature of the district attorney's decision.[26] The primary rationale in all three cases, however, was the

17. 3 Cal. 3d at 94, 473 P.2d at 996, 89 Cal. Rptr. at 252.

18. 5 Cal. 3d 119, 485 P.2d 1140, 95 Cal. Rptr. 524 (1971).

19. CAL. PEN. CODE § 17(b)(5) (West 1970).

20. The prosecutor's refusal to allow the defendant to be tried for a misdemeanor was the result of a county-wide policy not to consent to the prosecution of offenses as misdemeanors unless the defendant had first agreed to plead guilty. 5 Cal. 3d at 123-26, 485 P.2d at 1142-44, 95 Cal. Rptr. at 526-28.

21. *Id.* at 126, 485 P.2d at 1144, 95 Cal. Rptr. at 528.

22. *Id.* at 127, 485 P.2d at 1145, 95 Cal. Rptr. at 529.

23. *Id.*

24. 18 Cal. App. 3d 964, 96 Cal. Rptr. 213 (1971).

25. *Id.* at 969, 96 Cal. Rptr. at 216.

26. Esteybar v. Municipal Court, 5 Cal. 3d 119, 125-26, 485 P.2d 1140, 1144, 95 Cal. Rptr. 524, 528 (1971); People v. Tenorio, 3 Cal. 3d 89, 95, 473 P.2d 993, 996-97, 89 Cal. Rptr. 249, 252-53 (1970); People v. Clay, 18 Cal. App. 3d 964,

finding that the restrictions placed on the judicial power were violative of the separation of powers doctrine.

Section 3051 Commitment—Another Judicial Power

The *Navarro* court was faced with a concurrence requirement similar to those involved in *Tenorio, Esteybar* and *Clay,* but a different judicial function was involved. That function was the power to commit a narcotic addict to the rehabilitation program.[27] The supreme court held that both the imposition of sentence and the exercise of sentencing discretion were judicial functions. The requirement for district attorney concurrence was declared unconstitutional, and, as in *Esteybar* and *Clay,* the fact that addicts could be committed to the California Rehabilitation Center only through the grace of the legislature was held inadequate to give that body the power to condition commitment upon approval of the executive branch.[28]

Even though the concurrence provision was thus stricken, the court found that it was severable from the remainder of section 3051. This severance was consistent with a basic tenet of statutory interpretation: "When part of a statute is declared unconstitutional the remainder will stand if it is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation."[29] It previously had been held that the courts should exercise their commitment powers to implement the legislative policy demonstrated by the creation of the narcotic addict rehabilitation program.[30] Looking to these earlier decisions and the legislature's intent, the *Navarro* court viewed the basic purpose of the amendment as allowing discretionary commitments in the interest of justice.[31] It therefore upheld the remainder of section 3051, determining that the legislative interest in providing such commitments outweighed the interest in requiring district attorney concurrence.[32]

Section 3053 and the Judicial Commitment Power

Tenorio, Esteybar, Clay and *Navarro* dealt with requirements for

969-70, 96 Cal. Rptr. 213, 217 (1971). *See* Comment, *Judicial Supervision Over California Plea Bargaining: Regulating the Trade,* 59 CALIF. L. REV. 962, 964 (1971).

27. The constitutionality of section 3051's concurrence requirement had previously been considered in two courts of appeal cases. *People v. Harris,* 17 Cal. App. 3d 388, 95 Cal. Rptr. 80 (1971), upheld the constitutionality of the concurrence requirement. *People v. Rotsell,* 92 Cal. Rptr. 542 (1971), held it unconstitutional as a restraint on judicial function.

28. 7 Cal. 3d at 259-60, 497 P.2d at 489, 102 Cal. Rptr. at 145.

29. *Id.* at 260, 497 P.2d at 489, 102 Cal. Rptr. at 145.

30. People v. Ortiz, 61 Cal. 2d 249, 254-55, 391 P.2d 163, 167, 37 Cal. Rptr. 891, 895 (1964).

31. 7 Cal. 3d at 262, 497 P.2d at 491, 102 Cal. Rptr. at 147.

32. *Id.*

district attorney concurrence before a court could employ its judicial power. These decisions, however, do not consider whether a requirement of any other official's concurrence also would be invalid. Such a requirement is found in section 3053 of the Welfare and Institutions Code. Because of this section, the *Navarro* decision does not guarantee that an addict will remain in the treatment program following commitment. He may be returned to the court under the provisions of section 3053[33] if the director of corrections[34] concludes that he is not a fit subject for confinement. Both the wisdom and constitutionality of this provision are questionable. The power to make commitments is judicial and should not be conditioned on the approval of any nonjudicial officer, particularly when that officer can disregard a judicial determination of fitness. Because *Navarro* held that authority to commit to the treatment program is a *judicial* power, the provision authorizing the director of corrections to return addicts to court, should they be found unfit for the program, would seem to be an administrative encroachment on the judiciary.

The existing measure of judicial review over the director's decisions does not affect the separation of powers argument. This review, however, may soften the invasion's visible impact, rendering it less apparent than a requirement of executive concurrence without review. The courts have found implied powers of review concerning the director's determination of fitness even though section 3053 makes no express provision for it.[35] The trial court can review the director's action to determine if there has been an abuse of discretion. If such an abuse is found, the court can require the director to reconsider his decision or it can simply return the defendant to the rehabilitation center under the original commitment order.[36]

The scope of this review is, however, very limited. Determina-

33. "If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that the person, because of excessive criminality or for other relevant reason, is not a fit subject for confinement or treatment in such narcotic detention, treatment and rehabilitation facility, he shall return the person to the court in which the case originated for such further proceedings on the criminal charges as that court may deem warranted." CAL. WELF. & INST'NS CODE § 3053 (West 1972).

34. The director of corrections has delegated his power to the superintendent of the California Rehabilitation Center and others pursuant to Penal Code section 5055. Letter from Roland W. Wood, Superintendent of the California Rehabilitation Center, to S. Kelly Cromer, Feb. 26, 1973, on file at the Hastings Law Journal. This note will continue to refer to the director of corrections as exercising this power to avoid confusion since the reference in section 3052 is to that position.

35. People v. Hannagan, 248 Cal. App. 2d 107, 115, 56 Cal. Rptr. 429, 435 (1967); People v. Berry, 247 Cal. App. 2d 846, 849, 56 Cal. Rptr. 123, 126 (1967).

36. People v. Montgomery, 255 Cal. App. 2d 127, 131, 62 Cal. Rptr. 895, 898 (1967). *See* People v. Pate, 234 Cal. App. 2d 273, 276, 44 Cal. Rptr. 462, 464 (1965).

tion of a defendant's fitness for the program is a *discretionary* matter which trial courts will not re-evaluate.[37] The court can only determine whether there has been an abuse of discretion—that is, whether discretion has been "exercised arbitrarily, capriciously, fraudulently, or without a factual basis sufficient to justify the refusal."[38] The court, in the last analysis, can only set the outer boundaries on the exercise of discretion; it cannot control this exercise within those boundaries.[39] For example, the courts have sustained findings of unfitness based on acts of personal violence and attempted suicide,[40] commercial narcotics trafficking,[41] selling heroin to a minor while still on outpatient status from the rehabilitation center,[42] marginal intelligence and unwillingness or inability to participate in the program,[43] and pending deportation.[44] The only circumstance in which courts have found abuses of discretion arose when procedural prerequisites were disregarded and a determination of unfitness was made prior to expiration of a sixty-day period which was formerly prescribed by section 3053.[45] This procedural requirement has been removed,[46] however, and no abuse of discretion has been found under the statute's present form. It thus appears that these powers of review are not adequate to protect against the invasion of judicial power.

The largest groups returned to court by the director consist of those with a pattern of criminality or those who were violent offenders.[47] These criteria are based on information which is available to the judge at the time of sentencing. In effect, the director can overrule the decision of a judge who concludes that a defendant's criminal record should not preclude him from treatment for addiction. For example, should a judge acting under section 3051 find a defendant to be an unusual case and the best interests of justice to be served

37. People v. Morgan, 21 Cal. App. 3d 33, 42, 98 Cal. Rptr. 165, 171 (1971).

38. People v. Pate, 234 Cal. App. 2d 273, 275-76, 44 Cal. Rptr. 462, 463 (1965).

39. *Id.*

40. People v. Hannagan, 248 Cal. App. 2d 107, 113-14, 56 Cal. Rptr. 429, 434 (1967).

41. People v. Berry, 247 Cal. App. 2d 846, 850-52, 56 Cal. Rptr. 123, 127-28 (1967).

42. People v. McCuiston, 246 Cal. App. 2d 799, 804-06, 55 Cal. Rptr. 482, 485-87 (1966).

43. People v. Marquez, 245 Cal. App. 2d 253, 257, 53 Cal. Rptr. 854, 858 (1966).

44. People v. Hernandez, 10 Cal. App. 3d 646, 649, 89 Cal. Rptr. 192, 194 (1970).

45. *See, e.g., In re* Swearingen, 64 Cal. 2d 519, 413 P.2d 675, 50 Cal. Rptr. 787 (1966); People v. Gallegos, 245 Cal. App. 2d 53, 53 Cal. Rptr. 663 (1966).

46. Cal. Stat. 1969, ch. 238, § 2, at 583.

47. Statement by Laurence M. Stutsman, Chief Deputy Director, Department of Corrections in *Proceedings of the Sentencing Institute for Superior Court Judges,* 93 Cal. Rptr. Sentencing Institute 119 (1970).

by commitment despite section 3052's eligibility limitations, the director of corrections nonetheless could find this defendant unfit on the basis of excessive criminality. On review, the same court which originally decided that the criminality of the defendant should be overlooked could not find an abuse of discretion by the director. While the court may determine whether the criminality relied on by the director actually exists (which it obviously would), it cannot redetermine whether such criminality in fact renders a person unfit for treatment.[48] The court thus would be compelled to approve a decision of the director which would counteract its own determination.

Elements other than excessive criminality or violent offenses which are incorporated into the director's decision may duplicate factors previously considered by the court. Judicial denials of commitment, for example, have been sustained when the following factors were involved: possession of deadly weapons at the time of arrest,[49] involvement in selling or otherwise trafficking in narcotics,[50] defendant's history of non-narcotic delinquent behavior or criminal activity,[51] a record of escape from confinement,[52] and failure to benefit from a similar treatment program.[53] In the administrative realm, the director of corrections has authority under section 3053 to return a person for either "excessive criminality or for other relevant reason."[54] Excessive criminality includes the use of dangerous or deadly weapons in the commission of an offense, large scale trafficking in narcotics and a pattern of criminality predating addiction.[55] "The 'other reason,' to be deemed 'relevant' must relate to the party's fitness for the confinement or treatment in a rehabilitation facility"[56] and includes such circumstances as the fact that the person has been released sev-

48. People v. Hakeem, 268 Cal. App. 2d 877, 881-83, 74 Cal. Rptr. 511, 513, *cert. denied*, 396 U.S. 913 (1969).

49. People v. Corona, 238 Cal. App. 2d 914, 922, 48 Cal. Rptr. 193, 198 (1965).

50. People v. Sateriale, 247 Cal. App. 2d 314, 316, 55 Cal. Rptr. 500, 501 (1966); People v. Corona, 238 Cal. App. 2d 914, 921, 48 Cal. Rptr. 193, 197-98 (1965).

51. People v. Flores, 6 Cal. 3d 305, 309-10, 491 P.2d 406, 409, 98 Cal. Rptr. 822, 825 (1971); *In re* Rascon, 64 Cal. 2d 523, 528, 413 P.2d 678. 682, 50 Cal. Rptr. 790, 794 (1966); People v. Sateriale, 247 Cal. App. 2d 314, 316-17, 55 Cal. Rptr. 500, 501-02 (1966).

52. *In re* Rascon, 64 Cal. 2d 523, 528, 413 P.2d 678, 682, 50 Cal. Rptr. 790, 794 (1966); People v. Meza, 14 Cal. App. 3d 553, 557, 92 Cal. Rptr. 423, 425-26 (1971); People v. Zapata, 220 Cal. App. 2d 903, 912-13, 34 Cal. Rptr. 171, 177 (1963).

53. *In re* Rascon, 64 Cal. 2d 523, 528, 413 P.2d 678, 682, 50 Cal. Rptr. 790, 794 (1966).

54. CAL. WELF. & INST'NS CODE § 3053 (West 1972).

55. Department of Corrections of the State of California, Civil Addict Program: Guidelines and Criteria for Those Eligible 2-3 (June 1, 1972) [hereinafter cited as Criteria].

56. People v. Hernandez, 10 Cal. App. 3d 646, 649, 89 Cal. Rptr. 192, 193 (1970).

eral times and repeatedly absconds from supervision or has previously been exposed to therapy and rehabilitation without significant gains.[57]

These criteria employed by the director to determine fitness could be utilized similarly by the judge. Records of a defendant's arrests and convictions, on which a finding of excessive criminality may be based, are available to the courts. The resources available for judicial examination of "other relevant reasons," while not so readily accessible, are not so remote that a judge could not make an evaluation based on the same factors. While the evaluation of some criteria[58] undoubtedly should be left to the discretion of the director of corrections, a judicial determination of a factor such as excessive criminality should not be subject to a form of executive review.

A judge is presumed capable of determining *unfitness* for the program.[59] He also should be deemed capable of determining fitness to the extent of the information available to him. A superior court judge has the discretion to refuse to institute commitment proceedings limited only by the broad guidelines of a presumption in favor of finding fitness established by the supreme court and the legislative policy which "favors inquiry into the addictive status of *all* criminal defendants whose record indicates the presence of an addiction problem."[60] Where the judge has determined on the basis of adequate information that a defendant does not constitute a fit subject for commitment, the ruling will not be disturbed absent a showing of abuse of discretion.[61] A finding of fitness should be accorded the same finality where based on adequate information.

Despite this argument for section 3053's unconstitutionality, constitutionality was affirmed by the court of appeal in the 1966 case of *People v. Marquez*.[62] The court could "see no reason why" the provision would be unconstitutional. It contended that "[s]ince a defendant has no absolute right to treatment under the program, the Legislature may make continuance of treatment conditional on any reasonable criterion, determined by such agency as it may reasonably select."[63] Nevertheless, the *court's* right to make commitments to treat-

57. Criteria, *supra* note 55, at 3-4.

58. These criteria would be based on information not available to a sentencing judge. They could include, for example, aggressive sexual deviation, mental illness or defect, or senility. *See* Criteria, *supra* note 55, at 4.

59. CAL. WELF. & INST'NS CODE § 3051 (West 1972).

60. People v. Ortiz, 61 Cal. 2d 249, 254-55, 391 P.2d 163, 167, 37 Cal. Rptr. 891, 895 (1964).

61. People v. Jolke, 242 Cal. App. 2d 132, 143, 51 Cal. Rptr. 171, 179 (1966); People v. Williams, 235 Cal. App. 2d 389, 403, 45 Cal. Rptr. 427, 436 (1965); People v. Zapata, 220 Cal. App. 2d 903, 913, 34 Cal. Rptr. 171, 178 (1963).

62. 245 Cal. App. 2d 253, 53 Cal. Rptr. 854 (1966).

63. *Id.* at 257, 53 Cal. Rptr. at 858.

ment was also involved, and *Navarro* held that the legislature *cannot* make this conditional on any such criterion.[64] Furthermore, the *Marquez* court believed that fitness for the program should be determined by experts:

> [W]hether or not any given defendant can be treated with success is a fact which, in the last analysis, must be determined not by judges but by people trained in that field and actually engaged in the treatment process. Hence, out of practical necessity [section 3053] leaves to the professional experts the final decision on whether or not treatment should be begun or be continued.[65]

Yet the decision made by the director of corrections may not always be based on the determinations of a staff of experts.[66] There is no abuse of discretion should the director, after considering reports from his staff, not follow their recommendations.[67] The statements of these experts are not binding, and the director can return a defendant to court on the same information available to the committing judge.[68]

Marquez should not be viewed as the final word on the constitutionality of section 3053. The *Navarro* decision rests on the separation of powers doctrine as interpreted in California. The fact that the invasion of the judicial sphere was performed by the district attorney—a partial advocate—reinforces the basic *Navarro* argument, but it is not essential to the result. Even invasions of judicial power not tinged with impropriety may be unconstitutional.[69] Thus, the situation is not altered because the director of corrections and the staff of the rehabilitation center who make fitness recommendations are not

64. 7 Cal. 3d at 259, 497 P.2d at 488-89, 102 Cal. Rptr. at 144-45.

65. 245 Cal. App. 2d at 256-57, 53 Cal. Rptr. at 857.

66. The procedure for determining whether a person is a fit subject for the narcotic addict program involves several levels. "When the individual falls within any of [the] categories [set forth in Criteria, *supra* note 55] his case is reviewed at the Unit level where the man is housed. He then is referred to a three member Exclusion Review Committee made up of the Deputy Superintendent and two correctional administrators who very carefully review all available information." This may include, for example a field investigation by a parole agent to determine if an individual convicted on a serious sales charge was a seller primarily to support his own habit or if it was a commercial enterprise. "The Exclusionary Review Committee may recommend retention in the Civil Addict Program, however, if the recommendation is for exclusion or if there is a difference of opinion among the Committee Members final review is the responsibility of the Superintendent." Letter from Roland W. Wood, Superintendent of the California Rehabilitation Center, to S. Kelly Cromer, Feb. 26, 1973, on file at the Hastings Law Journal.

67. People v. Hakeem, 268 Cal. App. 2d 877, 882, 74 Cal. Rptr. 511, 514, *cert. denied,* 396 U.S. 913 (1969).

68. *See* People v. Fuller, 20 Cal. App. 3d 159, 164-66, 97 Cal. Rptr. 455, 458-59 (1971).

69. *See* People v. Navarro, 7 Cal. 3d 248, 259, 497 P.2d 481, 488, 102 Cal. Rptr. 137, 144; Reaves v. Superior Court, 22 Cal. App. 3d 587, 595-96, 99 Cal. Rptr. 156, 161 (1971).

partial advocates, or even because they perform their functions fairly. When the addict is returned to court, judicial power to commit is being conditioned on the approval of a member of the executive branch—the director of corrections—and is arguably in violation of article three of the California Constitution and the *Navarro* rationale.

Resolutions to Section 3053's Possible Unconstitutionality

The separation of powers problem raised by section 3053 can be resolved in any one of three manners. One possible solution is repeal of the section. Total elimination, however, would destroy the power of the director of corrections to determine fitness even on grounds not considered by an expertly advised judge. Such drastic action is merely a remote legislative possibility.

A second possible solution is amendment. Such an amendment would both limit the director's determination to facts not within the knowledge of the trial court and make his decision subject to full judicial review. This would eliminate the separation of powers problem, since the final decision would remain with the judge. Furthermore, it would dispense with duplications of effort in the process of determining fitness for commitment. Here again, however, it is unlikely that the legislature would take such action.

A third possibility is a broadening of the courts' review power by the judiciary itself. The courts could either relegate the director's determination of fitness to the status now occupied by a commitment decision made by a court or expand abuse of discretion to include situations where the director has returned an addict to the court on the basis of information which was available to the judge at the time of commitment. This solution has the advantages of practicality of implementation (it can be accomplished by the judiciary itself) and ease of administration (the court could compare the grounds for the director's finding with those of its own decision).

One of these possible solutions is necessary because section 3053, as previously interpreted and currently existing, constitutes an invasion of the judicial power to make commitments to the narcotic rehabilitation program. The present power of review assumed by the courts is inadequate to remedy the primary problem: the final decision rests with the director of corrections, and his determination may in effect reverse that of the trial judge. In view of the holding in *Navarro* that the right to make commitments is a judicial power, any of the director's authority under section 3053 which invades this area should be curbed, either by legislative or judicial action.

Youth Authority Sentences

The second argument raised by the defendant in *Navarro* rea-

soned that since the ineligibility provisions of section 3052 apply only to felony convictions, that section should not apply to the defendant because he only had been sentenced to the Youth Authority. This sentencing, Navarro argued, converted his prior conviction to a misdemeanor.[70] Although the overall issue had been settled by its resolution of the separation of powers argument, the court reached the sentencing issue in dicta.

The acts included in section 3052[71] are those with long term minimum sentences, crimes against the person, public decency and good morals, felonies involving bodily harm or attempts to inflict bodily harm, and certain drug offenses. This statute has been strictly construed, evidencing the courts' continuing desire to extend the benefits of the narcotic program as widely as possible.[72] In many cases[73] a strained, but semantically correct, construction of statutory authority rendered the defendants eligible for the rehabilitation program. The *Navarro* court allowed a similar extension by reasoning from the fact that most of the offenses listed in section 3052 are felonies, concluded that the legislature intended to include only offenses which were made felonies by statute or sentence.[74] Thus, the court's holding underscored the judiciary's readiness to broaden eligibility for commitment to the narcotic addict rehabilitation program.

Navarro had been convicted in 1958 of assault with a deadly weapon, which carried optional sentences of a maximum state prison term of ten years, a maximum one year term in county jail, or a fine, or a prison term and a fine.[75] A state prison sentence would have made the offense a felony, but in 1957 the offense was deemed a misdemeanor whenever the judge sentenced a defendant to incarceration somewhere other than a state prison[76] and Navarro had been sent to the Youth Authority. The court held that this commitment to the Youth Authority after conviction of an optional sentence offense unconditionally reduced the offense to a misdemeanor for all purposes.[77] Thus, Navarro, was not ineligible for the narcotic addict treatment program under the felony only restrictions of section 3052.[78]

70. 7 Cal. 3d at 256-57, 497 P.2d at 486, 102 Cal. Rptr. at 142.

71. See note 9 *supra*.

72. Belton, *supra* note 4, at 638.

73. *E.g.*, People v. Ibarra, 60 Cal. 2d 460, 386 P.2d 487, 34 Cal. Rptr. 863 (1963); People v. Wallace, 59 Cal. 2d 548, 381 P.2d 185, 30 Cal. Rptr. 449 (1963); People v. Murgia, 254 Cal. App. 2d 386, 62 Cal. Rptr. 131 (1967).

74. 7 Cal. 3d at 266, 497 P.2d at 493-94, 102 Cal. Rptr. at 149-50.

75. CAL. PEN. CODE § 245 (West Supp. 1972).

76. Cal. Stat. 1957, ch. 1012, § 1, at 2248-49.

77. 7 Cal. 3d at 271, 497 P.2d at 497, 102 Cal. Rptr. at 153.

78. Previous decisions had left the issue muddled. People v. Williams, 27 Cal. 2d 220, 163 P.2d 692 (1945), held that commitment to the Preston School of Industry

Expungement of Records

In addition to finding that the concurrence provision of section 3051 was unconstitutional and that Navarro's commitment to the Youth Authority reduced his prior conviction to a misdemeanor, the court discussed whether his honorable discharge from the authority resulted in an automatic release from penalties and disabilities resulting from the prior offense, including ineligibility under section 3052. The determination of this issue rested on an interpretation of section 1772 of the Welfare and Institutions Code and the effect of a 1949 amendment on that section. As amended, this section provided that an honorable discharge acts as a release from all penalties and disabilities resulting from the offense for which the person was committed.[79] The amendment, however, left intact a procedural routine requiring formal application to the committing court for expungement of the record.[80] The court in *Navarro*, nevertheless, decided that this was the result of the legislature's inadvertance, and Navarro and other honorable dischargees were released from the penalties and disabilities without any requirement for formal application.[81]

based on a conviction of an optional sentence offense constituted a felony for the purpose of impeachment as a witness. This commitment, however, occurred prior to the effective date of the Youth Authority Act and was not governed by it. Subsequent court of appeal decisions failed to discern the clear distinction between the commitment in *Williams* to the school and commitment to the Youth Authority. For example, People v. Palacios, 261 Cal. App. 2d 566, 68 Cal. Rptr. 137 (1968), read *Williams* as authority for the position that commitment to the Youth Authority for an alternate sentence offense was a felony conviction for purposes of impeachment as a witness. 261 Cal. App. 2d at 575, 68 Cal. Rptr. at 143.

The issue was further confused because an amendment to section 17 of the Penal Code, in effect from 1947 to 1957, provided that the offense for which commitment was made was a felony unless a formal order was granted by the court declaring the offense to be a misdemeanor. Cal. Stat. 1947, ch. 826, § 1, at 1960 (repealed 1957). In 1957 the section was restored to its pre-1947 form. Cal. Stat. 1957, ch. 1012, § 1, at 2249. A 1959 amendment explicitly made an offense a misdemeanor where the statute in question allowed alternative sentences and where the convicted person was committed to the authority. Cal. Stat. 1959, ch. 532, § 1, at 2498.

Navarro concluded that the 1959 amendment did not alter the policy that had existed between 1957 and 1959, but merely made an attempt to more clearly articulate the legal status of an individual committed to the authority. Therefore, "a commitment to the authority based upon conviction of an optional sentence offense reduced that offense unconditionally to a misdemeanor for all purposes except during the years when the 1947 amendment was in effect." 7 Cal. 3d at 271, 497 P.2d at 497, 102 Cal. Rptr. at 153.

79. CAL. WELF. & INST'NS CODE § 1772 (West 1972).

80. The expungement question raised in *Navarro* was *procedural* only. Parks v. Superior Court, 19 Cal. App. 3d 188, 96 Cal. Rptr. 645 (1971), which held that the 1949 amendment created an absolute *substantive* right in persons honorably discharged by the Youth Authority to section 1772 relief, was cited with approval in *Navarro*. 7 Cal. 3d at 272, 497 P.2d at 498, 102 Cal. Rptr. at 154.

81. 7 Cal. 3d at 273, 497 P.2d at 499, 102 Cal. Rptr. at 155.

To find this inadvertance, the court examined analogous provisions in Welfare and Institutions Code section 1179,[82] which explicitly provides for automatic expungement of the record. This section, as well as section 1772, confers an absolute right to release from all penalties and disabilities when the youthful offender is honorably discharged. On the other hand, unlike section 1772, the procedure delineated pursuant to such discharge is mandatory and must be followed by both the Youth Authority and the court which made the commitment. In contrast to section 1772, no application to obtain the release is required, and there is no necessity for any other action by the dischargee.[83] The court concluded that the provisions were analogous because (1) both sections reflect the same legislative intent of providing incentives for a youthful offender to work toward an honorable discharge,[84] and (2) they may apply to the same persons.[85] Therefore it was reasonable to assume that the legislature intended to provide the section 1179 automatic release from all penalties and disabilities when it amended section 1772 in 1949.[86] For these reasons, the court in *Navarro* concluded that those who received an honorable discharge from the Youth Authority were entitled as a matter of right to have the authority issue a pro forma release and to have the committing court issue an order of dismissal.[87]

The phrase "penalties and disabilities" in the context of the California expungement provisions[88] had been construed previously to refer only to criminal or quasi-criminal sanctions imposed either as punishment or for the prevention of crime.[89] It does not refer to the civil consequences of conviction. The court in *Navarro* found section 3052 ineligibility for commitment to the treatment program to be a criminal sanction since the ineligibility arises from a prior criminal conviction and affects a present criminal sentence.[90] Thus expungement could release this disability. Significantly, the legislature specified that expungement of a prior conviction under Penal Code

82. *Id.* at 274, 497 P.2d at 499, 102 Cal. Rptr. at 155.

83. CAL. WELF. & INST'NS CODE § 1179 (West 1972).

84. 7 Cal. 3d at 277, 497 P.2d at 501, 102 Cal. Rptr. at 157.

85. *Id.*

86. *Id.*

87. *Id.* at 278, 497 P.2d at 502, 102 Cal. Rptr. at 158.

88. Expungement, literally, is the obliteration of a record. *See* Black's Law Dictionary 693 (rev. 4th ed. 1968). However, the California expungement statutes are actually rather narrow in their application. See text accompanying note 98 *infra*.

The statutes providing for expungement are: CAL. PEN. CODE §§ 1203.4a (West 1970), 1203.4, 1203.45 (West Supp. 1972); CAL. WELF. & INST'NS CODE §§ 781, 1179, 1772, 3200 (West 1972).

89. *See* Kelly v. Municipal Court, 160 Cal. App. 2d 38, 45, 324 P.2d 990, 994 (1958).

90. 7 Cal. 3d at 280, 497 P.2d at 504, 102 Cal. Rptr. at 160.

sections 1203.4 and 1203.4a does not affect either pleading or proving the conviction in any subsequent prosecution, but no such provision was included in sections 1179 and 1772.[91] The implication is that expungement under the latter sections does prevent alleging the expunged convictions; without a prior conviction there was no barrier under section 3052 to rehabilitation program commitment.

Expungement and the Addict

The *Navarro* court drew an analogy between the stated purposes of the Youth Authority Act[92] and those of the Narcotic Addicts Act.[93] Both have the same general purpose of public protection through treatment and rehabilitation.[94] Nonetheless, although the goals are the same, the means available for attainment are widely disparate. The expungement provision of section 1772 was recognized by the court as incentive legislation to encourage a youth to achieve rehabilitation.[95] There is, however, no such incentive for the narcotic addict undergoing treatment. Thus while honorable discharge from the Youth Authority results in automatic release from the collateral consequences of conviction,[96] the successfully treated narcotic addict is faced with almost all of these consequences which linger, even following the available expungement procedure.[97]

91. *Id.* at 279, 497 P.2d at 502-03, 102 Cal. Rptr. at 158-59.

92. CAL. WELF. & INST'NS CODE § 1700 (West 1972).

93. CAL. WELF. & INST'NS CODE § 3000 (West 1972).

94. 7 Cal. 3d at 281, 497 P.2d at 504, 102 Cal. Rptr. at 160.

95. *Id.* at 272, 497 P.2d at 498, 102 Cal. Rptr. at 154.

96. Release from civil consequences stems from the sealing of records. See text accompanying notes 112-17 *infra*. The court stated in *Navarro* that sections 1179 and 1772 contain no provision for sealing of records. 7 Cal. 3d at 279, 497 P.2d at 503, 102 Cal. Rptr. at 159. However, there would appear to be no reason why a person whose record had been expunged under these two sections could not apply for sealing relief under Penal Code section 1203.45 if he met the requirements. See note 97 *infra*.

97. CAL. WELF. & INST'NS CODE § 3200 (West 1972).

The limited expungement provisions for narcotics addicts under this section are: (1) if the person is granted and files a certificate of rehabilitation, the court discharges the person from the treatment program; (2) it may also dismiss the criminal charges of which such person was convicted; (3) this dismissal has the same effect as a dismissal under Penal Code section 1203.4 except that it is still a conviction for purposes of Division 10 of the Health and Safety Code.

The general ineffectiveness of Penal Code section 1203.4 in providing relief from the collateral consequences of a criminal conviction has been discussed in a number of articles. *E.g.*, Baum, *Wiping Out a Criminal Or Juvenile Record*, 40 CAL. ST. B.J. 816 (1965); Booth, *The Expungement Myth*, 38 L.A.B. BULL. 161 (1963); Zwerin, *Section 1203.4, Pen. Code*, 36 CAL. ST. B.J. 94 (1961); Comment, *Criminal Records of Arrest and Conviction: Expungement from the General Public Access*, 3 CAL. WEST. L. REV. 121 (1967); Comment, *Restoration Of Rights To Felons In California*, 2 PAC. L.J. 718 (1971).

Following release from the rehabilitation program, the former addict traditionally has been faced with a multitude of disabilities flowing from his conviction, including revocation of business and professional licenses, denial of and dismissal from employment which does not require a license, deportation, prohibition from possession of concealable firearms, and impeachment if he testifies as a defendant in a criminal trial.[98] These primarily civil disabilities are largely unaffected by expungement. Knowledge of these disabilities and the difficulties they produce operates as a counterincentive to rehabilitation during the treatment program.[99] After release, the rehabilitated addict will be segregated from society to a great extent.[100]

These disabilities are only partially relieved by section 3200, which allows reinstatement of voting rights,[101] freedom from impeachment as a civil or criminal witness,[102] and exemption from registration as a narcotics offender.[103] Expungement does not mean the conviction is obliterated.[104] If queried about a conviction in a job application or other questionnaire, an affirmative answer is required.[105] Furthermore, eligibility for relief under section 3200 depends upon a determination by the director of corrections that the rehabilitated addict has abstained from the use of narcotics for a specified period[106]

It is doubtful that any person committed to the narcotic addict treatment program could have his record sealed on release. Penal Code section 1203.45 explicitly requires that the person have been under 21 at the time the offense was committed and the offense must have been a misdemeanor; it does not apply to violations of Division 10 of the Health and Safety Code (the common drug offenses). Thus the narcotic addict is probably not eligible. *See* People v. Sharman, 17 Cal. App. 3d 550, 552-53, 95 Cal. Rptr. 134, 135 (1971).

98. The subject of civil disabilities is discussed in Comment, *The Effect of Expungement on the Criminal Conviction,* 40 S. CAL. L. REV. 127 (1967). For an exhaustive study of civil disabilities see Grant, LeCornu, Pickens, Rivkin and Vinson, *The Collateral Consequences of a Criminal Conviction,* 23 VAND. L. REV. 929 (1970) [hereinafter cited as Grant].

99. Grant, *supra* note 98, at 1225.

100. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 91 (1967); Grant, *supra* note 98, at 1226.

101. Truchon v. Toomey, 116 Cal. App. 2d 736, 745, 254 P.2d 638, 644 (1953).

102. People v. Mackey, 58 Cal. App. 123, 131, 208 P. 135, 138 (1922). But he is still subject to impeachment as a criminal defendant. People v. James, 40 Cal. App. 2d 740, 747, 105 P.2d 947, 951 (1940).

103. *Cf.,* Kelly v. Municipal Court, 160 Cal. App. 2d 38, 45, 324 P.2d 990, 994-95 (1958).

104. Meyer v. Board of Medical Examiners, 34 Cal. 2d 62, 65, 206 P.2d 1085, 1087 (1949).

105. Baum, *supra* note 97, at 819.

106. Two consecutive years are required while in outpatient status or three years while an outpatient from the CRC in a methadone program. CAL. WELF. & INST'NS CODE § 3200 (West 1972).

and complied with the conditions of his release. Upon such a determination, the director advises the Narcotic Addict Evaluation Authority. If this body and the director concur, the authority may recommend discharge to the court, and the court may dismiss the original charges.[107] Thus, not only is the relief available to a rehabilitated addict limited in its effect, but the procedure for obtaining this relief rests on the discretion of the director of corrections, the Narcotic Addict Evaluation Authority and the court.

A Proposal

The California legislature has specifically declared its interest in the treatment and rehabilitation of narcotics addicts in section 3000.[108] It also has reacted to judicial criticism[109] of the stigma attached to commitment under the Narcotic Addicts Law by removing most of the criminal indicia.[110] This reaction has included repeal of the Penal Code version of the statute and its re-enactment in the Welfare and Institutions Code.[111] This demonstrated intent to eliminate the taint of criminality from commitment, however, would be more adequately served by enacting a statute providing for the sealing of records to afford relief from civil disabilities.

Such a statute could be modeled on the sealing statute for juvenile court proceedings.[112] Under such a provision, if the court found that the ex-addict "has not been convicted of a felony or any misdemeanor involving moral turpitude and that rehabilitation has been attained,"[113] it would order all records of the commitment for narcotic addiction treatment, including the conviction of the offense for which commitment was the sentence, sealed and then direct each agency and official having a record of the conviction and commitment to comply with the order. "Thereafter, the proceedings in such case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed."[114] A sealing statute of this type would eliminate the primary civil disability faced by the rehabilitated narcotic addict following release from the treatment program—the adverse effect a crim-

107. *Id.*

108. CAL. WELF. & INST'NS CODE § 3000 (West 1972).

109. *See In re* De La O, 59 Cal. 2d 128, 149, 378 P.2d 793, 807, 28 Cal. Rptr. 489, 503, *cert. denied,* 374 U.S. 856 (1963).

110. Cal. Stat. 1965, ch. 1226, § 1, at 3062; Cal. Stat. 1963, ch. 1706, § 1, at 3351.

111. Cal. Stat. 1965, ch. 1226, § 2, at 3062.

112. CAL. WELF. & INST'NS CODE § 781 (West 1972).

113. *Id.*

114. *Id.*

inal conviction has on employment possibilities.[115] If the legislature wished to retain any disabilities, such as use of the conviction as a prior conviction for sentencing narcotics recidivists,[116] it could do so. The sealing statute for juvenile court records presently contains similar limitations.[117]

Development of a procedure for sealing the record of events related to a commitment for narcotics addiction would provide a strong incentive for rehabilitation. Both the legislature and the courts have recognized the need for such motivation, whether the person concerned is a youthful offender or a narcotic addict, and whether the incentive is expungement or sealing. The legislature, by enacting a sealing provision, would contribute greatly to the expressed goal of rehabilitation.

Conclusion

People v. Navarro, relying on the separation of powers doctrine, held invalid the concurrence provisions of Welfare and Institutions Code sections 3050 and 3051, thus continuing the trend in cases where the legislature had attempted to condition the exercise of a judicial power on the district attorney's assent. Convicted narcotic addicts now may be judicially committed to the California Rehabilitation Center in those unusual cases where, in the judge's opinion and his alone, justice would be served in committing a defendant otherwise ineligible. Secondly, *Navarro* held that except for the 1947 to 1957 period, commitment to the Youth Authority in lieu of confinement in state prison unconditionally caused the offense to be a misdemeanor for all purposes. Finally, the court determined that honorable discharge from the Youth Authority creates an automatic right to have the record expunged of the offense which resulted in the original commitment. Since no affirmative action is required of the discharged individual, this results in a guaranteed release from some of the disabilities flowing from a criminal conviction. It also clears the way for more comprehensive relief from civil liabilities under a sealing statute.

Although *Navarro* has enhanced possibilities for commitment to the narcotic treatment program and reinforced the rehabilitative effect of the Youth Authority program, it left for future consideration

115. If questioned about the record of the applicant, an agency whose files had been sealed would reply "We have no record on the named individual." 40 OP. CAL. ATT'Y GEN. 50 (1962).

116. Division 10 of the Health and Safety Code provides for longer sentences for repeating drug offenders. For example, Health and Safety Code section 11500 (possesison of a narcotic other than marijuana) provides for a sentence of 2-10 years for a first offender, 5-20 years for a second offender, and 15 years to life for a person previously convicted two or more times.

117. CAL. WELF. & INST'NS CODE § 781 (West 1972).

the question of whether section 3053, allowing the director of corrections to return to court those addicts considered unfit, is unconstitutional. The arguments applied to invalidate the district attorney concurrence provision of section 3051 could be extended by analogy to section 3053. The legislature can eliminate the separation of powers problem either by repeal of section 3053 or through an amendment limiting the director's power to review the court's determination of fitness. Alternatively, the courts could expand their review of the director's returns by widening the abuse of discretion definition to include returns based on the same information available to the sentencing judge.

Navarro's discussion of Youth Authority record expungement and the comparison between the goals of commitment to the Youth Authority and the California Rehabilitation Center point to the necessity of greater expungement relief for the rehabilitated narcotic addict. The enactment of a sealing statute would serve as an incentive to those in the treatment program and further the declared legislative purpose of rehabilitation.

While the *Navarro* decision deals with relatively narrow questions regarding the Youth Authority and the narcotic addiction treatment program, it is a significant step in the continuing judicial movement toward the application of rehabilitative rather than punitive measures as a response to criminal offenders. Hopefully, the California legislature and courts will continue this progressive trend towards treatment as an alternative to mere confinement.

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